

HOUSE BILL 3268

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 51, Part 2, relative to presumptive disability in acquiring certain infectious diseases in the line of duty by professional public safety employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, Part 2, is amended by adding Section 2 as a new, appropriately designated section.

SECTION 2.

(a) As used in this section, unless the context otherwise requires:

(1) "Body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the centers for disease control and prevention, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons;

(2) "Heightened risk of occupational exposure" means risk that is incurred by a professional public safety employee, in performing the basic duties associated with such employee's employment while:

(A) Providing emergency medical treatment in a non-healthcare setting where there is a potential for transfer of body fluids between persons; or

(B) At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handling body fluids in or out of containers or working with or otherwise handling needles or other sharp instruments exposed to body fluids;

(3) "Infectious disease" means human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), all strains of hepatitis, meningococcal meningitis, mycobacterium tuberculosis, smallpox generally recognized by the medical community, methicillin-resistant staphylococcus aureus (MRSA) or related diseases;

(4) "Occupational exposure," in the case of infectious diseases, means an exposure that occurs during the performance of job duties that may place an employee at risk of infection; and

(5) "Professional public safety employee" means any person employed full time by the state or any political subdivision of the state, including any county having a metropolitan form of government, as a firefighter, paramedic, emergency medical technician or emergency medical technician advanced or during their career has served in any or all of these positions during the previous fifteen (15) years. However, "professional public safety employee" does not include any person employed by a public hospital or any person employed by a subsidiary thereof.

(b)

(1) The general assembly finds a professional public safety employee, in the course of employment, runs a heightened risk of occupational exposure to infectious diseases.

(2) For such reasons, any professional public safety employee who suffers a condition or impairment of health that is caused by an infectious disease, and that results in total or partial disability or death, shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence. However, in order to be entitled to the presumption, the professional public safety employee must verify by written declaration that, to the best of the professional public safety employee's knowledge and belief:

(A) In the case of a medical condition caused by or derived from an infectious disease, other than meningococcal meningitis or mycobacterium tuberculosis, the professional public safety employee has not:

(i) Been exposed outside the scope of the employee's employment, through transfer of bodily fluids, to any person known to have any sickness or medical condition derived from an infectious disease;

(ii) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with the employee's present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for infectious disease, which tests failed to indicate the presence of any infectious disease;

(iii) Engaged in unsafe sexual practices or other high-risk behavior, as identified by the centers for disease control and prevention or the surgeon general of the United States, or had sexual relations with a person known to the employee to have

engaged in such unsafe sexual practices or other high-risk behavior; or

(iv) Used intravenous drugs not prescribed by a physician;

(B) In the case of meningococcal meningitis, in the ten (10) days immediately preceding diagnosis, the professional public safety employee was not exposed, outside the scope of the employee's employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease; or

(C) In the case of mycobacterium tuberculosis, in the period of time since the employee's last negative tuberculosis skin test, the professional public safety employee has not been exposed, outside the scope of the employee's employment, to any person known by the employee to have mycobacterium tuberculosis.

(c) Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of an infectious disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the advisory committee on immunization practices of the United States public health service, a professional public safety employee may be required by such employee's employer to undergo the immunization or prophylaxis unless the employee's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the employee's health. Absent such written declaration, failure or refusal by a professional public safety employee to undergo such immunization or prophylaxis disqualifies the employee from the benefits of the presumption established by this section.

(d) This section does not apply to benefits payable under or granted in a noncompulsory policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract. However, the state or any political subdivision of the state, including any county having a metropolitan form of government, may negotiate a policy contract for life and disability insurance which includes accidental death benefits or double indemnity coverage for any condition or impairment of health suffered by a professional public safety employee, which condition or impairment is caused by an infectious disease and results in total or partial disability or death.

(e) The employing agency shall maintain a record of any known or reasonably suspected exposure of a professional public safety employee in its employ to an infectious disease and shall immediately notify the employee of such exposure. A professional public safety employee shall file an incident or accident report with the professional public safety employee's employer of each instance of known or suspected occupational exposure to infectious disease.

(f)

(1) In order to be entitled to the presumption established by this section, a professional public safety employee must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the infectious disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This subdivision (f)(1) does not apply in the case of meningococcal meningitis.

(2) On or after the effective date of this act, a professional public safety employee may be required to undergo a pre-employment physical examination that tests for any evidence of infectious disease as defined by this statute. In

order to be entitled to the presumption established by this section, the test shall be negative for evidence of infectious diseases as defined by this statute.

(g) This section does not change the basic requirements for determining eligibility for disability retirement benefits under the Tennessee consolidated retirement system or any pension plan administered by this state or any political subdivision thereof, except to the extent of affecting the determination as to whether a member was disabled in the line of duty or was otherwise disabled.

(h) This section shall apply to any professional public safety employee following termination of service, including retirement, for a period of three (3) months for each full year of service commencing with the last actual date of service.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring

it.